

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION
On Its Own Motion

Revision of 83 Ill. Adm. Code 280.

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Docket No. 06-0703

POSITION STATEMENT OF ILLINOIS-AMERICAN WATER COMPANY

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Dated: October 14, 2011

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Illinois-American Water Company ("IAWC" or the "Company") respectfully submits the instant Position Statement, which sets forth the Company's positions on the revisions to 83 Ill. Adm. Code Part 280 ("Part 280") as proposed by Staff on surrebuttal in this proceeding, ICC Staff Ex. 3.0, Attachment A (filed Mar. 17, 2011), hereinafter referred to as "Staff's Proposed Rule."

SUBPART A: GENERAL

Section 280.05 Policy

IAWC Position:

IAWC takes the position Section 280.05, as presently written, is impractical, burdensome and contrary to long-standing Illinois law. Accordingly, IAWC proposes revising, in part, Section 280.05 of Staff's Proposed Rule. Specifically, IAWC proposes the following revisions:

The purpose of this rule is to ensure that essential utility services are provided to and maintained for the People of the State of Illinois, and to establish fair and equitable procedures within the scope of this Part, that take into account the duty of the utility, customer, applicant and occupant to demonstrate good faith and fair dealing. The policies and procedures outlined in this rule ~~shall take precedence over any inconsistent utility tariff, unless the conflicting tariff provision has been specifically approved by the Commission as a waiver or exemption from this rule, and~~ shall be viewed as the minimum standards applicable to gas, electric, water and sanitary sewer utilities. This Part shall not supersede tariff provisions which have been reviewed and approved by the Commission. Utilities that are subject to these rules shall have the ability to expand or supplement the customer rights guaranteed by these provisions as long as those policies are applied in a nondiscriminatory manner.

(IAWC Ex. FLR-2.0, p. 15; IAWC Reply Br., pp. 6-7.)

IAWC does not question that the Commission may, through rules like 83 Ill. Adm. Code Part 280, establish minimum requirements for utility service. IAWC points out the Commission could even mandate that standard of service rules supplant utility tariffs *currently* on file (*i.e.*, the existing, pre-rulemaking tariffs), and require a re-filing of tariffs to be consistent, citing 83 Ill. Adm. Code 600.30(b). IAWC believes, however, that proposed Section 280.05 does not take that approach. Rather, IAWC contends, the "precedence" language in that section would require that the Part 280 rules supersede all duly approved utility tariffs deemed inconsistent, including tariffs authorized *subsequent* to the time the new Part 280 rules take effect. In other words, IAWC

believes that language would require Part 280 to supersede not just *present* tariff provisions, but all *future* tariff provisions as well.

IAWC believes this poses several practical concerns. First, IAWC contends it is unclear what constitutes an “inconsistent utility tariff.” IAWC questions whether only express inconsistencies are to be considered, or implicit ones as well. IAWC further believes the determination of whether a tariff is “implicitly” inconsistent with Part 280 could involve significant litigation over interpretation of the rule. IAWC also questions whether those tariffs which offer more favorable treatment to customers than what is required by the rule are to be considered “inconsistent.” IAWC contends, where a utility tariff offers more favorable treatment than Part 280, the “precedence” language of proposed Section 280.05 would require that the less favorable provisions of Part 280 control. Next, IAWC contends the determination of whether a “conflicting tariff provision has been specifically approved by the Commission as a waiver or exemption” will be difficult. IAWC questions whether every utility tariff provision that could be interpreted as inconsistent be expressly designated as a waiver from Part 280. IAWC argues the “precedence” language of proposed Section 280.05 would require that every variance from the Part 280 rules in a utility tariff be specifically approved by the Commission as a waiver or exemption, including all future tariff changes by the utility. IAWC believes it is not clear whether such approval must take the form of a Commission order or specific tariff language. IAWC also believes that a utility may have to conduct continuous reviews of its tariffs to make sure “waivers” are in place to comply with proposed Section 280.05. Further, IAWC contends that a duly approved tariff might still be called into question when there has not been a “specific” waiver. IAWC takes the position that, once a tariff has been considered and approved by the Commission, it has the force of a statute. Thus, IAWC argues the added burden of obtaining a specific waiver or exemption, as required by proposed Section 280.05, is superfluous.

IAWC believes testimony submitted by GCI, who sponsored proposed Section 280.05, illustrates the practical implications of the “precedence” language of that section. Specifically, IAWC points out that, although GCI witness Ms. Marcelin-Reme testified the revised Part 280 should control over a subsequently-filed tariff which is in conflict with the rule, but nevertheless approved by the Commission, she could not state under what circumstances a utility would be required to seek an exemption or waiver under the “precedence” language of proposed Section 280.05. (Tr., pp. 664-65; 692-93.) IAWC also points to Ms. Marcelin-Reme’s testimony that Section 280.05’s “precedence” language would apply not only to explicit conflicts between a tariff and Part 280, but to *implicit* conflicts as well. (*Id.*, p. 693.) IAWC argues, given that the conceivable *implicit* conflicts between Part 280 and tariffs approved by the Commission (both those on file and those to be filed) are numerous, the proposed language is unworkable. Further, IAWC believes Section 280.05 as currently proposed could require all utilities to seek blanket Part 280 waivers from the Commission with respect to their current and future tariffs. IAWC contends GCI offered no remedy to these concerns. (*Id.*, pp. 695-96.) IAWC argues revised Part 280 should not limitlessly burden the resources of the Commission, including its Staff, and the utilities it regulates with the requirement of endless waiver and exemption filings.

IAWC also takes the position that a utility's tariff governs the relationship, duties, and obligations between the utility and its customers. IAWC argues these relationships, duties, and obligations are statutory, not contractual, in nature. IAWC argues the "precedence" language in proposed Section 280.05 upsets this relationship by requiring that future tariffs, though duly authorized, be superseded by the Part 280 administrative rules. IAWC further contends proposed Section 280.05 conflicts with the requirement that a utility's tariff have the force of statute when governing utility/customer duties and obligations. IAWC believes it may cause customer confusion by making it difficult to determine what controls, the tariff or the rule. IAWC takes the position the tariff should control, as it will be clear from the tariff what the rules governing the utility/customer relationship are.

IAWC believes it is particularly problematic that proposed Section 280.05 could require that Part 280 rules control over Commission-approved tariff provisions authorized in the *future*, after Part 280's implementation. IAWC maintains that once a tariff has been approved, the Part 280 rules cannot control. It argues, as recently as January of this year, the Illinois Supreme Court reiterated the principle that the tariff controls, citing *Sheffler v. Commonwealth Edison Co.*, No. 110166, 2011 Ill. LEXIS 1099, **15-16 (June 16, 2011). IAWC also relies on that Court's holding in *Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 57-58 (2004) ("Illinois courts have long held that a tariff . . . provides the source for, and determines the nature and extent of, a public utility's service obligations to its customers."). IAWC argues this authority supports its position that the tariff—and not Part 280—must determine utility and customer obligations in the event of inconsistency. IAWC also argues it is equally well-settled that a statute controls over a conflicting administrative regulation, citing *Holtcamp Trucking Co. v. Fletcher*, 402 Ill. App. 3d 1109, 1126 (4th Dist. 2010) and *Kean v. Walmart Stores, Inc.*, 235 Ill. 2d 351, 366 (2009). Thus, IAWC argues, should a tariff approved by the Commission conflict with Part 280, or any of the regulations promulgated by that agency, Illinois law demands that the tariff control.

IAWC contends the testimony of GCI witness Ms. Marcelin-Reme made clear GCI's proposed Section 280.05 was offered without regard to existing Illinois law. It points out that Ms. Marcelin-Reme testified that she was sponsoring a policy position as opposed to a legal position. (Tr., p. 663.) IAWC also points out that Ms. Marcelin-Reme testified she was not aware of the body of case law regarding interpretation of administrative regulations, and she had no opinion as to whether proposed Section 280.05 was intended to change that body of otherwise applicable case law. (*Id.*, pp. 697-698.) IAWC concludes from this that Ms. Marcelin-Reme made her recommendation in ignorance of the law.

IAWC also points out that Staff witness Mr. Agnew testified language such as the "precedence" language in proposed Section 280.05 is novel to the Commission's regulations. (Tr., p. 786.) IAWC posits the Commission's regulations have not heretofore included such language given the abundant case law to the contrary. IAWC argues the revised Part 280 should not depart from such longstanding precedent.

Finally, IAWC states that it endorses the additional arguments offered by MEC and Nicor in opposition to the “precedence” language in proposed Section 280.05. IAWC also indicated that it would accept Nicor’s alternative language for this section.

Section 280.10 Exemptions

IAWC Position

IAWC does not contest Section 280.10 of Staff’s Proposed Rule.

IAWC opposes GCI’s proposal to revise Section 280.10 to require annual documentation, evaluation, reporting, and Commission approval of any modifications or exemptions to the Rule granted by the Commission. IAWC agrees with Staff that GCI failed to explain how their recommendation would work procedurally. In the absence of such explanation, IAWC asserts it must be assumed GCI’s recommendation would require utilities to annually file with the Commission, and the Commission to initiate a docketed proceeding, for the purpose of re-documenting, reevaluating, re-reporting and re-approving exemptions to Part 280. IAWC contends this will result in an undue burden on the utilities, the Commission, and its Staff. (IAWC Reply Br., p. 11.)

IAWC further contends GCI’s recommendation will require customers to scour the Commission’s files, presumably on e-Docket, to determine whether a utility has complied with the annual requirement that an exemption be re-approved by the Commission. (*Id.*, pp. 11-12.) IAWC asserts GCI admits this in its Initial Brief. (GCI Corr. Initial Br., p. 12.) IAWC also submits, given that GCI’s proposal requires annual reevaluation, the practical implications are that the resulting docketed proceedings would be numerous. IAWC states it fails to see how scouring those numerous Commission filings to determine if an exemption is still in effect would not be onerous on consumers. It takes the position that, absent the GCI-proposed annual filing requirement, only one source need be consulted to determine whether an exemption has been granted—the utility’s Commission-approved tariff. (IAWC Reply Br., pp. 11-12.)

IAWC also argues GCI’s recommendation ignores the cost implications of their proposal. The Company contends annual filings by utilities to seek Commission re-approval of an already approved exemption could be expected to require increased utility time and resources. IAWC contends the resulting increased costs would be borne by all ratepayers. (*Id.*, p. 12.)

New Section 280.15 Compliance

IAWC Position

IAWC agrees with and supports adoption of Nicor’s proposed Section 280.15. IAWC contends Staff’s Proposed Rule is substantially different from the current Part

280. As such, IAWC states, in order to comply with Staff's Proposed Rule, the Company's IT and customer systems will require substantial modification. (IAWC Ex. FLR-1.0 (CORR.), pp. 3-4, 9, 10, 13, 14; IAWC Ex. FLR-2.0, p. 5.) IAWC states it is in the process of upgrading its customer service systems and capabilities; once implemented, the upgraded systems may be able to handle many, if not all, of the requirements imposed by Staff's Proposed Rule. The Company does not expect to complete that process until 2013. (IAWC Ex. FLR-1.0 (CORR.), p. 4.) IAWC believes, depending on the timing of the final effective date of the revised Part 280, IAWC could be required to modify its existing systems to comply with the revised Part 280 immediately, absent adoption of proposed Section 280.15, only to replace those modified systems shortly thereafter. IAWC contends that such a process would be inefficient. IAWC witness Mr. Ruckman testified that it would be neither cost-effective nor beneficial to modify its current system which has a short shelf life. (Tr., p. 561.)

IAWC also contends it is within the authority of the Commission to authorize compliance with a new rule at some time after the effective date of the same, citing ICC Docket No. 03-0214, 2003 Ill. PUC LEXIS 595, **7-8, 9-10 (Order) (July 9, 2003) and ICC Docket No. 00-0586, 2001 Ill. PUC LEXIS 792, **31-32 (Order) (July 26, 2001).

IAWC points out Staff testified they are not IT experts and cannot say how much time it would require for the utilities to bring their systems into compliance, but that there has to be some period of time for utilities to implement the new rule. (Tr., pp. 791-93.) IAWC submits the Commission should defer to the expertise of the witnesses who submitted sworn testimony on behalf of the utilities in this proceeding and who are intimately familiar with each utility's IT systems and business processes. Those witnesses estimate it will take approximately two years for the utilities to come into full compliance with the new rule, but that system modifications cannot be undertaken in earnest until a final rule is in place.

IAWC also points to that evidence in response to GCI's assertion the record lacks support for a two-year compliance provision and for the utilities' alleged delay in undertaking system modifications. IAWC contends what GCI deem unjustified delay is in fact prudence on the part of the utilities. IAWC points out that GCI do not dispute it is not cost-effective for the utilities to begin system modifications which may ultimately prove superfluous dependent upon the Commission-approved revised Part 280. IAWC witness Mr. Ruckman testified, it is neither cost-effective nor in IAWC's customers' best interest to modify one system while developing a new one to meet the requirements of the new rule. (Tr., p. 560.) IAWC suggests that the Commission may send its Staff and the intervening parties back to the drawing board regarding one or more of the provisions in Staff's Proposed Rule. IAWC also asserts GCI's claim that "Illinois' utilities have not used the lead time of this prolonged proceeding to make their systems more modular to accommodate foreseeable changes or to begin high-level system design," (GCI Corr. Initial Br., p. 16), is wrong. IAWC argues such claim is belied by the fact that the evidence of record shows it would not be cost-effective to act before the final rule is known. IAWC further points out that it has in fact considered high-level system design in light of Staff's Proposed Rule. (Tr., pp. 560-61.)

Section 280.20 Definitions

“Actual Reading” through “Illegal Tap”

IAWC Position

IAWC does not contest the definitions of “Actual Reading” through “Illegal Tap.”

“Low Income Customer”

IAWC Position

IAWC proposes revising the definition of “Low Income Customer” to apply only to gas and electric utility customers, and not to water and wastewater customers. (IAWC Ex. FLR-1.0 (CORR.), p. 5; IAWC Ex. FLR-3.1, p. 5.) IAWC contends, as presently drafted, the definition makes an inappropriate distinction between the customers of those two groups of utilities because the definition of “Low Income Customer” is dependent on determination of the customer’s low income status under the Illinois Energy Assistance Act of 1989 (305 ILCS 20/6), promulgated pursuant to the federal Low Income Home Energy Assistance Program (“LIHEAP”) and administered by LIHEAP agencies. IAWC states, as providers of home energy, gas and electric utilities participate in LIHEAP. IAWC believes this makes the determination of a customer’s low income status simple for those utilities. This is because, as IAWC explains, when a customer of those utilities applies for and is approved to receive LIHEAP aid by a LIHEAP agency (who has verified the customer’s income and other eligibility requirements), the utility is notified by letter. IAWC contends receipt of that notification requires gas or electric utilities to treat that customer as a “low income customer” under the definition proposed by Staff.

IAWC argues that the process, under Staff’s proposed definition of “Low Income Customer,” is not so simple for water and waste water utilities. IAWC states these types of utilities are not home energy providers and, thus, do not (and cannot) participate in LIHEAP. IAWC further points out that these utilities had no participation in the processes that resulted in the adoption and approval of the LIHEAP rules and regulations. (IAWC Ex. FLR-1.0 (CORR.), pp. 4-5; IAWC Ex. FLR-2.0, p. 3.) IAWC contends, with respect to those utilities, Staff’s proposed definition of “Low Income Customer” requires water and wastewater utilities to determine whether a customer meets the income requirements and would be afforded “low income” status under the applicable LIHEAP law. IAWC contends this determination would require the utility to validate “proof” of low income status. IAWC believes the definition as drafted would require water and wastewater utilities to undertake this verification process, but does not ask the same of gas and electric utilities who are simply notified by a LIHEAP agency. IAWC argues that waste and wastewater utilities are being asked to step into the shoes of a LIHEAP agency. IAWC asserts water and wastewater utilities should not be so disparately treated under the Rule.

IAWC further contends, because water and wastewater utilities do not participate in LIHEAP or administer any aspect of the program, those utilities are unfamiliar with the requirements for maintaining low income status under the program. IAWC believes they may not be equipped to properly verify a customer's income or low income status under LIHEAP. (IAWC Ex. FLR-1.0 (CORR.), pp. 4-5.) IAWC contends the definition of "Low Income Customer" as proposed by Staff nevertheless asks water and waste water utilities to assume the role of LIHEAP agencies and do just that. IAWC argues that LIHEAP agencies, unlike water and wastewater utilities, are equipped to accept, verify and process LIHEAP applications. It points to testimony and verified data request responses submitted by Intervenor South Austin Coalition Community Council ("SACCC"), which operates a LIHEAP application intake site. (LIRC Ex. 2.0, p. 3; IAWC Cross Ex. 2.) IAWC argues that evidence demonstrates the multi-faceted process by which SACCC receives and processes LIHEAP applications and details the varied types of income information that is required by a LIHEAP intake site of a LIHEAP applicant. IAWC contends, unlike the Company, which accepts utility service applications over the telephone and electronically, LIHEAP applications cannot be taken over the phone or submitted electronically and require an original signature. IAWC further asserts the SACCC evidence demonstrates LIHEAP intake sites have general familiarity with many of the applicants, social security programs and public assistance programs, and may have entire units dedicated to reviewing applications for compliance. (*Id.*)

IAWC contends the SACCC evidence illustrates there are numerous information requirements and elements to determining LIHEAP eligibility. IAWC maintains that asking water and wastewater utilities to take on the same income verification process as a LIHEAP intake site will unduly and inappropriately burden those utilities. IAWC argues Staff's proposed definition of "Low Income Customer" would require IAWC to perform the functions of a LIHEAP intake site, but it is unfair to ask water and wastewater utilities to take on that burden. IAWC states that water and wastewater utilities governed by Part 280 may have the ability to develop such resources, but the resulting costs would be borne by the utilities' customers. IAWC further points out that LIHEAP receives funding from the federal government and is administered by third party social services agencies which coordinate their efforts with the energy utilities. (IAWC Ex. FLR-2.0, p. 4.)

IAWC notes there appears to be disagreement among the parties as to whether eligibility for LIHEAP alone qualifies a gas or electric customer as having "low income" status under Staff's proposed definition, or whether qualification by a LIHEAP agency must first be achieved, and the gas or electric utility necessarily notified of the same. It points to a line of questioning of Nicor witness Mr. Lukowicz by GCI's counsel at the evidentiary hearing in this proceeding. (Tr., pp. 958-63.) IAWC contends that line of questioning makes apparent that GCI assume an individual who could qualify for LIHEAP *but has not applied* for LIHEAP is a "low income customer" under Staff's proposed definition, while Nicor assumes an individual must *actually qualify* for LIHEAP assistance before achieving "low income" status. (*Id.*)

IAWC also argues that requiring special rules for its low income customers is

unnecessary. IAWC states, for over ten years, it has participated in programs designed to assist such customers on a statewide basis through its Help to Others (“H2O”) program. IAWC explains that program provides assistance to customers in need and is offered in partnership with the Salvation Army, which serves as administrator of the program. (IAWC Ex. FLR-1.0 (CORR.), p. 5; IAWC Ex. FLR-2.0, p. 1; Tr., pp. 555-56.) Because the Salvation Army tends to have offices in each one of the Company’s service areas, IAWC believes the program is accessible to and convenient for customers. (Tr., p. 555.) IAWC asserts the program operates effectively and it is appropriate for the Company to continue participation in it, rather than attempt to participate in LIHEAP, which serves to aid only energy, specifically heating and cooling, consumers. (IAWC Ex. FLR-1.0 (CORR.), p. 5.) Additionally, IAWC states it participates in customer and school education programs that promote water conservation, which also provide assistance to customers attempting to manage the cost of their water utility service. (IAWC Ex. FLR-2.0, pp. 1-2.) It is IAWC’s position that programs targeted to customers who actually need help in paying their bills and are easily administered by third party social services agencies, such as IAWC’s H2O program, are more appropriate than an extensive set of costly new rules for the relatively small number of low income customers of water and sewer utilities. (*Id.*, pp. 3, 6.)

IAWC further argues it is not appropriate for the Commission’s Rules, and specifically Part 280, to favor one type of low income customer assistance program over another and, especially, to favor a program not designed for water or wastewater utilities and their customers. (IAWC Ex. FLR-1.0 (CORR.), p. 5.) IAWC believes Staff’s proposed definition of “Low Income Customer” for water and waste water utilities (and the provisions in Staff’s Proposed Rule specifically pertaining to low income customers, Sections 280.45, 280.65 and 280.125) would create a sub-class of water and wastewater customers that is entitled to preferential treatment. IAWC argues this is improperly discriminatory under Illinois Law. (IAWC Ex. FLR-2.0, p. 1.) IAWC points to Section 1-102(c) of the Public Utilities Act which provides that the goals and objectives of Commission regulation are to ensure the fair treatment of consumers so that the cost of supplying utility services is allocated to those who cause the cost to be incurred. 220 ILCS 5/1-102(c). It is the position of IAWC that, because the cost to serve “low income customers” as a designated group increases the cost of utility service to all ratepayers, defining “low income customers” as a separate class runs contrary to Illinois law.

In response to GCI and LIRC’s defense of the definition of “Low Income Customer” as proposed by Staff, IAWC contends the record evidence does not support application of low income customer rules to water and sewer utilities, nor does it suggest special rules for low income customers will result in a higher rate of payment or a reduction in uncollectibles from low income customers or from customers generally. (IAWC Ex. FLR-2.0, p. 2.) IAWC argues it is therefore unclear how the general body of ratepayers, and particularly water and sewer ratepayers, would benefit from this new classification. (*Id.*, pp. 2-3.) IAWC points out that witnesses for GCI and LIRC who support the “low income customer” provisions of Staff’s Proposed Rule testified they had not conducted or relied on any studies regarding the impact of their recommendations on water or sewer utilities or whether their recommendations were

cost-justified as applied to water and sewer utilities. (IAWC Cross Ex. 1; IAWC Ex. FLR-2.1, p. 6; Tr., p. 290.) IAWC also contends that, although those witnesses claimed their recommendations should apply to water and sewer utilities, they could not identify any specific education or experience they had related to water or sewer utilities. (IAWC Cross Ex. 1; IAWC Ex. FLR-2.1, p. 2; Tr., p. 288.) Thus, it is IAWC's opinion that the evidence of record on this issue supports adoption of its position.

Finally, IAWC points out that both MCPU and Nicor propose revising the definition of "Low Income Customer" to provide an individual qualifies for such status when the LIHEAP administrator notifies the utility of the same. Although IAWC believes the definition of "Low Income Customer" (and the provisions specifically applicable to "low income customers," Sections 280.45, 280.65 and 280.125) should not be applicable to water or wastewater utilities for the reasons stated above, IAWC asserts, if the Commission determines the "low income customer" provisions of new Part 280 should apply to water and wastewater utilities, and determines that "Low Income Customer" should continue to be defined in relation to low income status under LIHEAP, the definition of "Low Income Customer" should be revised in accordance with MCPU and Nicor's proposals so that that low income status is not triggered until a LIHEAP agency has approved an application for aid and issued notice of the same. IAWC further submits, if the MPCU or Nicor's proposal is adopted, water and wastewater utilities should receive treatment similar to gas and electric utilities under the rule. Accordingly, IAWC believes the designation of "Low Income Customer" should be triggered for customers of water or wastewater utilities when those customers provide a copy of the LIHEAP notification to the utilities. The Company believes this would eliminate the currently proposed definition's requirement that water and wastewater utilities verify a customer's income and whether that level of income falls within the eligibility limits of LIHEAP, and would treat all utility services in Illinois the same with respect to the determination of whether the customers they serve qualify as "low income customers."

"Master-metered customer"

IAWC Position

IAWC does not contest the definition of "Master-metered customer."

"Medical payment arrangement" or "MPA"

IAWC Position

IAWC proposes deleting the definition of "Medical payment arrangement" or "MPA." (IAWC Ex. FLR-1.0 (CORR.), p. 12; IAWC Ex. FLR-3.1, p. 5.) IAWC takes the position that deferred payment arrangements which are entered into as the result of a medical certification are no different than other payment arrangements offered by a utility to accommodate its customers' ability to pay for their utility service. IAWC believes it is therefore unnecessary to separately define and require payment arrangements which result from medical certifications. (IAWC Ex. FLR-1.0 (CORR.), p.

12.)

“Medical Necessity”

IAWC Position

IAWC proposes adding the definition of “Medical necessity,” which term it points out is used in Staff’s proposed Section 280.160, but is not defined in Staff’s Proposed Rule. (IAWC Ex. FLR-1.0 (CORR.), p. 12; IAWC Ex. 2.0, p. 12.) IAWC proposes a definition of “Medical necessity” which would require a correlation between the life-threatening nature of the medical condition at issue and the discontinuance of the particular utility service. (IAWC Ex. FLR-2.0, p. 12; IAWC Ex. FLR-3.1, p. 6.) IAWC states it receives medical certifications for non-life-threatening conditions and conditions that would not be adversely affected by the discontinuance of water utility service. (IAWC Ex. FLR-2.0, p. 12.) It is IAWC’s position that this is contrary to the intent of, and represents an abuse of, a rule regarding medical certifications. IAWC asserts its’ proposed definition of “Medical necessity” would further the intent of the rule and prevent abuse by assisting both utility customers and physicians issuing medical certifications in distinguishing between medical conditions and those which would rise to the level of life-threatening in the event a particular utility service is discontinued. (IAWC Ex. FLR-1.0 (CORR.), pp. 12-13; IAWC Ex. FLR-2.0, pp. 12-13.) IAWC points out that no party presented testimony opposing IAWC’s proposal in this regard.

“Meter service provide” through “Supplier power and energy charges”

IAWC Position

IAWC does not contest the definitions of “Meter service provider” through “Supplier power and energy charges.”

“Tampering”

IAWC Position

IAWC proposes revising the definition of “Tampering” to encompass any unauthorized alteration which causes damage to utility equipment or facilities. (IAWC Ex. FLR-2.0, p. 13; IAWC Ex. FLR-3.1, pp. 6-7.) IAWC states Staff’s proposed “Tampering” definition assumes tampering involves theft of utility service only. IAWC points out that, in some cases, tampering does not involve theft, but involves unauthorized use of utility facilities which results in damage to those facilities. (IAWC Ex. FLR-2.0, p. 13.) For example, as IAWC explains, a customer may turn off water to their property at IAWC’s shut-off valve in order to perform work on the premises’ plumbing and, in the process, damage utility equipment. IAWC claims, under such circumstances, the utility would suffer monetary damage, but not related to theft of its utility service. IAWC thus takes the position that the tampering rules should permit the utility to charge the customer for damage to its equipment and allow it to discontinue

service in the event of nonpayment. (*Id.*, p. 13.) IAWC points out that no party presented testimony opposing IAWC's proposal in this regard. Rather, IAWC notes GCI would agree that tampering is an intentional act, and that it is inappropriate for a customer to alter utility equipment. (Tr., pp. 210, 211.)

“Transfer of service” and “Type of service”

IAWC Position

IAWC does not contest the definitions of “Transfer of service” and “Type of service.”

SUBPART B: APPLICATIONS FOR UTILITY SERVICE

Section 280.30 Application

Subsections 280.30(a), (b) and (c)

IAWC Position

IAWC does not contest Subsections 280.30(a) through (c) of Staff's Proposed Rule.

Subsection 280.30(d)

Subsections 280.30(d)(1) and (2)

IAWC Position

IAWC does not contest the proposed language of Subsection 280.30(d)(1). However, IAWC proposes revising (d)(2) to permit the applicant to choose the first form of identification from the list in (d)(1) he or she will provide to the utility, and to permit the utility to designate which form of identification from the same list it will accept from the applicant as a second form of identification, in the event the utility requires a second form of identification from the applicant. (IAWC Ex. FLR-1.0 (CORR.), p. 6; IAWC Ex. FLR-3.1, p. 8.) IAWC believes it may be difficult or time consuming to verify the validity of some of the forms of identification listed in (d)(1), such as credit cards, employment records and banking information. IAWC believes the resources necessary to verify such forms of identification will result in increased costs for all customers. IAWC asserts that language in (d)(2) requiring that an applicant provide identification which is “valid and accurate” does not sufficiently address IAWC's concern. IAWC contends, under Subsection 280.30(d)(2) as proposed by Staff, it will nevertheless be required to undertake the time-consuming and expensive process to verify as accurate certain forms of identification which, by their nature, are difficult to verify. Despite the outcome of that process, IAWC contends Staff's Proposed Rule would nevertheless require

IAWC to undertake it. IAWC reiterates the cost of such verification process ultimately would be borne by IAWC's ratepayers. IAWC submits its proposed solution appropriately resolves this concern and protects ratepayers from unnecessary expense; it strikes a reasonable balance between utility and consumer concerns.

In response to Staff's position that its proposed language in Subsection 280.30(d)(2) protects applicants who are unable or unwilling to provide certain forms of identification, IAWC states Staff overlooks that increased costs will be borne by all ratepayers as a result of enactment of that proposed language. IAWC asserts the compromise it offers, which allows both the applicant and the utility to designate acceptable forms of identification from a list of multiple forms, alleviates Staff's concern that applicants may be disqualified based on a technicality.

In response to GCI's proposed revision to Subsection 280.30(d)(2) to expressly provide that the utility may not favor one form of identification over another, IAWC points out that GCI witness Ms. Alexander testified her preference, if there was an issue with the validity of documents provided by an applicant for utility service, would be for the utility to ask for the applicant's driver's license or photo ID, rather than for the utility to call the police or reject the application outright. (Tr., pp. 355-58, 359.) IAWC also notes Ms. Alexander could not say in what manner a utility could validate the identity of an applicant presenting a credit card as identification, other than having the applicant sign their name in order to compare signatures. (*Id.*, p. 360.) IAWC thus argues GCI have not fully comprehended the ramifications of their proposal. IAWC maintains some forms of identification may be more difficult to verify, and asserts the compromise it proposes presents a fair balance of the parties' interests.

Subsection 280.30(d)(3)

IAWC Position

IAWC does not contest Subsection 280.30(d)(3) of Staff's Proposed Rule.

Subsection 280.30(d)(4)

IAWC Position

IAWC proposes revising Subsection 280.30(d)(4) to require the applicant to provide their preferred method of contact from the utility, telephone number when available, e-mail address when available, and contact information for the property owner/manager when the premises at issue is rental property. (IAWC Ex. FLR-1.0 (CORR.), pp. 5-6; IAWC Ex. FLR-3.1, pp. 8-9.) IAWC points out Staff's Proposed Rule permits the applicant to supply that information at the applicant's option. IAWC asserts it must be able to communicate with its customers in order to meet customer service needs and safety issues, and cites boil water advisories as an example. (IAWC Ex. FLR-1.0 (CORR.), pp. 5-6; IAWC Ex. FLR-2.0, p. 4.) IAWC further asserts it is IAWC's policy to attempt to call a customer who is subject to disconnection of service after they

have sent that customer a disconnection notice, but before service has been disconnected. IAWC believes that this call affords the customer a final opportunity to avoid disconnection as well as possible reconnection fees. As such, IAWC takes the position that, if an applicant's contact information is available, they should be required to supply it. (IAWC Ex. FLR-2.0, p. 4.)

In response to Staff's contention that making such information requisite could lead to the technically correct conclusion that a utility could reject an application if one of the required means of contact could not be supplied by the applicant, IAWC reiterates its position that requiring an applicant to supply such contact information *if available* would alleviate Staff's concern. (*Id.*, p. 4.) IAWC maintains utilities do not seek to deny applications for service, especially on a technicality.

IAWC points out GCI support their proposal. It notes GCI witness Ms. Alexander testified, "[u]tilities clearly have the right to demand that the applicant provide their name, address, service location, and telephone number (if the customer has a telephone listing in their name)." (GCI Ex. 5.0 (Rev.), p. 11.) IAWC further notes Ms. Alexander admitted the utility has a right to know who they are dealing with when creating an account, to allow the utility to both initiate its business relationship with the customer and to enforce debt collection, if necessary. (Tr., p. 236.) Finally, IAWC points out Ms. Alexander acknowledged the prevention of fraud, both when the utility is the victim and when an individual whose identity is stolen by an applicant for service is the victim, is yet another reason utilities should be entitled to an applicant's basic contact information, (*id.*, pp. 333-34), and she testified "[i]t would be a good business practice for a utility to have this basic information for the reasons [she] articulated," (*id.*, pp. 236-37.) Given Ms. Alexander's testimony, IAWC concludes GCI agree with the need for applicants to supply their basic contact information, if available.

Subsections 280.30(e) and (f)

IAWC Position

IAWC does not contest Subsections 280.30(e) or (f) of Staff's Proposed Rule.

Subsection 280.30(g)

IAWC Position

IAWC proposes deleting in its entirety Subsection 280.30(g). (IAWC Ex. FLR-1.0 (CORR.), p. 6; IAWC Ex. FLR-3.1, p. 10.) IAWC asserts that it presently provides the disclosures required by that subsection on its website, in its customer information packet, on every bill, and on every disconnect notice. Therefore, it is IAWC's position that the requirement of proposed Subsection 280.30(g) is duplicative and would result in increased costs to its customers which are disproportionate to any benefit to water and sewer utility service applicants. (IAWC Ex. FLR-1.0 (CORR.), p. 6.)

Subsections 280.30(h) and (i)

IAWC Position

IAWC does not contest Subsections 280.30(h) or (i) of Staff's Proposed Rule.

Subsection 280.30(j)

IAWC Position

IAWC does not contest Subsection 280.30(j) of Staff's Proposed Rule.

IAWC opposes AARP's recommended revision to require water and sewer utilities to connect service within 1 day. IAWC contends that proposal ignores the practicalities of connection and reconnection of those utilities. IAWC states that connecting or reconnecting sewer service is labor intensive and disruptive because sewer services do not have shut-off valves; connection and reconnection require a dig and unplugging of the sewer connection. (IAWC Ex. FLR-2.0, p. 13.) IAWC argues, because AARP's proposal does not address such issues and is impractical with respect to sewer utilities in particular, it should be rejected.

Subsection 280.30(k)

IAWC Position

IAWC proposes deleting in its entirety Subsection 280.30(k). (IAWC Ex. FLR-3.1, p. 12.) IAWC states it generally does not reject applications for service; thus, the number of applications it rejects is de minimis. As such, it is IAWC's position that the cost to collect and maintain information regarding rejected applications outweighs any benefit resulting therefrom. (IAWC Ex. FLR-1.0 (CORR.), p. 7; IAWC Ex. FLR-2.0, p. 5.) IAWC also points out that it appears the utilities' definitions of a "rejected" application vary. Therefore, IAWC believes requiring utilities to collect and maintain information on "rejected" applications could result in the collection of data that is not comparable among utilities. (IAWC Ex. FLR-2.0, p. 5.)

Section 280.35 Revert to Landlord/Property Management Agreements

IAWC Position

IAWC does not contest Section 280.35 of Staff's Proposed Rule.

SUBPART C: DEPOSITS

Section 280.40 Deposits

Subsections 280.40(a) through (h)

IAWC Position

IAWC does not contest Subsections 280.40(a) through (h) of Staff's Proposed Rule.

Subsection 280.40(i)

Subsection 280.40(i)(1)

IAWC Position

IAWC proposes revising Subsection 280.40(i)(1) to provide, "For a current small business customer, deposit refunds shall be made in accordance with the Small Business Utility Deposit Relief Act, 220 ILCS 35/4." (IAWC Initial Br., pp. 29-30; IAWC Reply Br., pp. 24-25.) IAWC recognizes the Small Business Utility Deposit Relief Act requires, for refunds to a utility's "Small business" customers, "[a]ll deposit refunds [to] be paid by separate check and not by credit to the small business' account except where discontinuance of service is affected." 220 ILCS 35/4(c). IAWC further agrees that for customers who meet the definition of "small business" under the Small Business Utility Deposit Relief Act, refund must be by separate check, "except where discontinuance of service is affected." *Id.* However, although IAWC notes Staff's expressed intent to make its Proposed Rule consistent with the Small Business Utility Deposit Relief Act, IAWC asserts Staff's proposed language in this subsection may instead create the potential for inconsistencies with that Act. For example, IAWC points out that Staff's Proposed Rule does not address the language that requires refund by check "except where discontinuance of service is affected." 220 ILCS 35/4(c). IAWC takes the position its proposed revision will ensure no conflict between Part 280 and the Small Business Utility Deposit Relief Act.

Subsection 280.40(i)(2)

IAWC Position

IAWC proposes revising Subsection 280.40(i)(2) to require refund by credit to the customer's account except when the customer requests that the refund be by separate payment. (IAWC Ex. FLR-2.0, pp. 5-6; IAWC Ex. FLR-3.1, p. 16.) IAWC asserts it is more efficient and cost effective to issue a credit to a customer's account than to prepare and mail a check. IAWC further believes a credit to a customer's account assures receipt of the returned funds. (IAWC Ex. FLR-1.0, p. 7; IAWC Ex. FLR-2.0, pp. 5-6.)

In response to Staff's contention the language of this Subsection makes room for the possibility of refund by credit to the customer's account when the amount to be refunded is small or the customer requests a credit instead, IAWC points out Staff also acknowledges that deposits are commonly equal to two months' bills. (ICC Staff Ex. 2.0, pp. 5, 32.) IAWC thus contends Staff's Proposed Rule would result in a de facto requirement that the utility always issue a check, given the amount of a customer's deposit. (IAWC Ex. FLR-2.0, pp. 5-6.)

IAWC also disagrees with Staff that it is appropriate to apply the refund by separate check requirement of the Small Business Utility Deposit Relief Act, 220 ILCS 35/4, to customers other than those deemed "small business" customers under that Act. IAWC contends Staff has presented no evidence substantiating such a connection.

Subsection 280.40(i)(3)

IAWC Position

IAWC does not contest Subsection 280.40(i)(3) of Staff's Proposed Rule.

Subsections 280.40(j) and (k)

IAWC Position

IAWC does not contest Subsections 280.40(j) or (k) of Staff's Proposed Rule.

Section 280.45 Deposits for Low Income Customers

IAWC Position

New Subsection 280.45(a)

IAWC proposes adding a new subsection (a) to Section 280.45 which provides the Section does not apply to customers of water, sewer or combined water and sewer utilities. (IAWC Ex. FLR-3.1, p. 17.) For the same reasons offered in support of its position regarding Section 280.20, "Low Income Customer," IAWC takes the position that Section 280.45 and the other "Low Income Customer" provisions of Staff's Proposed Rule should not apply to water and wastewater utilities. IAWC does not otherwise contest Section 280.45 of Staff's Proposed Rule.

SUBPART D: REGULAR BILLING

Section 280.50 Billing

IAWC Position

IAWC does not contest Section 280.50 of Staff's Proposed Rule.

SUBPART E: PAYMENT

Section 280.60 Payment

IAWC Position

Subsection 280.60(a)

IAWC does contest Subsection 280.60(a) of Staff's Proposed Rule.

Subsection 280.60(b)

IAWC Position

IAWC does not contest Subsection 280.60(b) of Staff's Proposed Rule.

IAWC opposes GCI's proposal to add language to Subsection 280.60(b)(2) to prohibit utilities from charging customers additional fees associated with any payment method sponsored by the utility on its website or offered to customers through the utility's call center. IAWC points out that GCI witness Ms. Alexander testified such fees should be "socialized," (Tr., p. 232), despite acknowledging the general ratemaking principle that cost causers should be responsible for the costs they incur, (*id.*, pp. 233-34.) IAWC contends certain payment methods cost more, and some types of fees may be unavoidable. IAWC further emphasizes that Ms. Alexander admitted she has not personally negotiated a processing fee with a credit card company, and has no direct knowledge regarding how flexible or inflexible those companies are in negotiating the fees they require. (*Id.*, pp. 351-52.) IAWC believes Ms. Alexander's recommendation ignores the fact that payment options are available for the convenience of customers and some payment options cost more to process than others. IAWC states GCI's proposal would require all customers, including those who use less costly methods, to bear the cost of higher cost payment methods, although not all customers benefit from use of those methods. IAWC takes the position that, if a customer chooses a more costly method of payment, that customer, and not the general body of ratepayers, should pay the increased cost.

IAWC also argues GCI's recommendation is unworkable. IAWC notes that GCI witness Ms. Marcelin-Reme acknowledged utilities do not force one payment option

over another and that those customers who pay by mail and those who pay by credit card do so at their option. (Tr., p. 678.) IAWC also points out, in contrast to Ms. Alexander's testimony, Ms. Marcelin-Reme testified payment processing fees charged by credit card companies should be absorbed by the utilities, rather than "socialized." (*Id.*, p. 723.) Further, IAWC points out Ms. Marcelin-Reme agreed it is important to take into consideration the interests of customers who would potentially subsidize costs if they are "socialized." (*Id.*, pp. 715-16.) Finally, IAWC notes, when asked whether she would rather have there be no option to pay by credit card at all, Ms. Marcelin-Reme testified the availability of that payment option is preferable. (*Id.*, pp. 723-24.) IAWC argues GCI cannot have it both ways.

Subsection 280.60(c)

IAWC Position

IAWC does not contest Subsection 280.60(c) of Staff's Proposed Rule.

Subsection 280.60(d)

Subsection 280.60(d)(1)

IAWC Position

IAWC does not contest Subsection 280.60(d)(1) of Staff's Proposed Rule.

Subsection 280.60(d)(2)

IAWC Position

IAWC agrees with Staff that late payment fees should be maintained at the 1.5% level. IAWC maintains a late payment fee is an important incentive to customers paying on time. (IAWC Ex. FLR-2.0, p. 8.) Further, IAWC asserts, to determine the utility's "actual" cost in processing late charges would require costly studies, the costs of which would ultimately be borne by ratepayers. IAWC contends it is unclear such increased cost would be outweighed by any benefit of determining actual cost. (IAWC Ex. FLR-2.0, p. 7.) IAWC further maintains, if payment is received late, the utility's cash working capital requirements increase. IAWC maintains late payment fees encourage customers to pay on a timely basis, thereby reducing the utility's overall cash working capital requirements and thus the utility's cost of service. IAWC further asserts late payment fees reduce the amount of revenue the utility would otherwise be required to recover through its rates, thus benefiting all customers, including those who occasionally pay late. (*Id.*, pp. 7-8; Tr., pp. 580-81.)

Subsection 280.60(d)(3)

IAWC Position

IAWC proposes revising Subsection 280.60(d)(3) to provide that, for past due amounts on a bill for an account subject to a budget payment plan, late fees shall be assessed on any undisputed past due budget payment amounts. (IAWC Ex. FLR-1.0 (CORR.), pp. 7-8; IAWC Ex. FLR-2.0, pp. 7-8; IAWC Ex. FLR-3.1, p. 23.) IAWC states the Company relies on timely payments as part of the utility's cash flow. (IAWC Ex. FLR-1.0 (CORR.), p. 7; IAWC Ex. FLR-2.0, p. 8.) It stresses that the failure of a customer on a budget payment plan to make timely payments under that plan causes increased cash working capital costs to the utility, which costs are borne by the general body of ratepayers. (IAWC Ex. FLR-1.0 (CORR.), pp. 7-8; IAWC Ex. FLR-2.0, p. 8.) IAWC takes the position that budget billing is a special accommodation which the utility makes to help its customers better manage their finances, and such accommodation comes at an increased costs to all customers. As such, IAWC believes it is inappropriate to exempt from late fees those customers utilizing a budget payment plan. Rather, IAWC contends it is appropriate to incentivize timely payments under a budget payment plan by imposing late fees on late payments even though those payments are levelized. (IAWC Ex. FLR-1.0 (CORR.), pp. 7-8; IAWC Ex. FLR-2.0, p. 8.)

In response to Staff's contention the current Part 280 exempts budget payment plans from late fees, IAWC argues Staff has presented no evidence or argument as to why the presence of such exclusion in the current rule justifies its retention in the revised rule.

In response to Staff's concern that it is unclear whether late fees should be assessed on the budget amount or the total amount under the budget payment plan under IAWC's proposed language, IAWC states that it is appropriate to apply the fee to the budget payment amount, or the amount due on the bill at issue. (IAWC Ex. FLR-2.0, pp. 8-9.)

Subsections 280.60(d)(4) through (6)

IAWC Position

IAWC does not contest Subsections 280.60(d)(4) through (6) of Staff's Proposed Rule.

Subsection 280.60(e)

IAWC Position

IAWC does not contest Staff's proposed deletion of Subsection 280.60(e) of Staff's Proposed Rule.

Subsection 280.60(f)

IAWC Position

IAWC does not contest Subsection 280.60(f) of Staff's Proposed Rule.

Section 280.65 Late Payment Fee Waiver for Low Income Customers

IAWC Position

New Subsection 280.65(a)

IAWC proposes adding a new subsection (a) to Section 280.65 which provides the Section does not apply to customers of water, sewer or combined water and sewer utilities. (IAWC Ex. FLR-3.1, p. 24.) For the same reasons offered in support of its position regarding Section 280.20, "Low Income Customer," IAWC takes the position that Section 280.65 and the other "Low Income Customer" provisions of Staff's Proposed Rule should not apply to water and wastewater utilities. IAWC does not otherwise contest Section 280.65 of Staff's Proposed Rule.

Section 280.70 Preferred Payment Date

IAWC Position

IAWC does not contest Section 280.70 of Staff's Proposed Rule.

Section 280.80 Budget Payment Plan

Subsections 280.80(a) through (h)

IAWC Position

IAWC does not contest Subsections 280.80(a) through (h) of Staff's Proposed Rule.

Subsection 280.80(i)

IAWC Position

IAWC proposes deleting in its entirety Subsection 280.80(i) for the reasons offered by the Company in support of its position regarding Section 280.60(d). (IAWC Ex. FLR-1.0 (CORR.), pp. 7-8; IAWC Ex. FLR-2.0, pp. 7-9; IAWC Ex. FLR-3.1, p. 27.)

In response to Staff's concern that it is unclear whether late fees should be assessed on the budget amount or the total amount under the budget payment plan under IAWC's proposed language, IAWC reiterates it is appropriate to apply the fee to

the budget payment amount, or the amount due on the bill at issue. (IAWC Ex. FLR-2.0, pp. 8-9.) IAWC acknowledges Staff's belief late fees are incentives to pay on time. However, IAWC contends, with respect to budget billing, the incentive to timely pay the full budget amount is that the customer will be dropped from the plan. (*Id.*, p. 51.) It argues, although customers may have other incentives for timely payment, that does not mean late payment fees should be waived. IAWC believes late payment fees are the main incentive to timely payment, whether payment is made on a budget payment plan or not. IAWC also emphasizes that late payment fees produce revenues that benefit all customers. (IAWC Ex. FLR-2.0, pp. 7-8.)

Subsections 280.80(j) and (k)

IAWC Position

IAWC does not contest Subsections 280.80(j) or (k) of Staff's Proposed Rule.

SUBPART F: IRREGULAR BILLING

Section 280.90 Estimated Bills

IAWC Position

IAWC does not contest Section 280.90 of Staff's Proposed Rule.

Section 280.100 Previously Unbilled Service

IAWC Position

IAWC does not contest Section 280.100 of Staff's Proposed Rule.

SUBPART G: REFUNDS AND CREDITS

Section 280.110 Refunds and Credits

Subsections 280.110(a), (b) and (c)

IAWC Position

IAWC does not contest Subsections 280.110(a) through (c) of Staff's Proposed Rule.

Subsection 280.110(d)

IAWC Position

IAWC proposes revising Subsection 280.110(d) to provide that a utility shall pay interest on any overpayment refunded to the customer or credited to the customer's account only when such overpayment is the result of an error on the part of the utility. (IAWC Ex. FLR-1.0 (CORR.), p. 8; IAWC FLR-2.0, p. 9; IAWC Ex. FLR-3.1, p. 31.) It is IAWC's position the general body of ratepayers should not be expected to fund the additional costs associated with monitoring for and paying back with interest customer overpayments (not resulting from utility error) that would result from implementation of this proposed provision. IAWC maintains that such overpayments are better remedied through application to future bills or by separate refund upon the customer's request. (IAWC Ex. FLR-2.0, p. 9.)

The Company further asserts ratepayers should not be expected to fund interest on overpayments for several reasons. First, it contends some customers pay in advance for the sake of convenience, as in the case of a customer leaving on a long trip who may pay in advance to avoid discontinuance while they are away. Second, IAWC contends customers may take advantage of mandatory utility interest payments on overpayments since the interest rate is set annually, and therefore could be higher than that offered by a bank. Finally, IAWC states it is not aware of interest payments made to customers for overpayments on any other type of consumer bill. (*Id.*, p. 9.) IAWC also notes GCI, MidAmerican and PGL/NS propose language similar to that proposed by IAWC which would limit interest paid on refunds or credits to those overpayments due to utility error.

In response to Staff's assertion, in defense of Subsection 280.110(d), that the remedy to intentional overpayments by customers is an immediate refund, IAWC points out that Staff's response overlooks that proposed Section 280.110(d) would require close monitoring by the utilities to ensure that overpayments are recognized as soon as they occur, and that they are immediately refunded by the utility once the utility is sure that it has the actual money in hand.

IAWC also contends Staff's position advocating "timely refunds" is wholly inconsistent with its position regarding Subsection 280.40(j). IAWC points out that Staff opposes IAWC's proposed revision to that subsection which would permit utilities to issue refunds by credit to the customer's account, which IAWC contends would be more "timely," and instead advocates the slow process of refund by check.

Finally, IAWC disagrees with Staff's assertion that questions of intent will overcomplicate the concept of proposed Subsection 280.110(d). IAWC contends it fails to see the difficulty in distinguishing an intentional overpayment made by a customer who pays in advance for the sake of convenience, for instance, prior to leaving for a long trip, and an unintentional overpayment which accords with an inadvertent utility billing error.

Subsection 280.110(e)

IAWC Position

IAWC does not contest Subsection 280.110(e) of Staff's Proposed Rule.

Subsection 280.110(f)

Subsection 280.110(f)(1)

In its Initial Brief, Staff indicated its willingness to accept ComEd's proposed revision to Subsection 280.110(f)(1) to increase the percentage amount of a customer's credit balance that will trigger a direct refund from Staff's proposed > 25% of the customer's average monthly bill to ComEd's recommended > 125%, on the condition the utilities accept Staff's position regarding interest on overpayments in proposed Subsection 280.110(d). (ICC Staff Initial Br., p. 50.) IAWC does not agree with Staff's proposal. For the same reasons set forth by the Company in support of its position regarding Subsection 280.110(d), IAWC contends, whether refunds are required at 25% or 125% of a customer's average monthly bill, monitoring would still be required to make "timely" repayments as Staff suggests. Further, IAWC states Staff's proposal does not resolve IAWC's concern that it is more cost-effective and efficient to make refunds by account credit rather than by check.

IAWC Position

IAWC does not contest Subsection 280.110(f) of Staff's Proposed Rule.

Subsection 280.110(g)

IAWC Position

IAWC does not contest Subsection 280.110(g) of Staff's Proposed Rule.

SUBPART H: PAYMENT ARRANGEMENTS

Section 280.120 Deferred Payment Arrangements (DPAs)

Subsection 280.120(a)

IAWC Position

IAWC proposes revising Subsection 280.120(a) to provide that payment arrangements shall maximize the successful retirement of "past due amounts," rather than "past due utility amounts." (IAWC Ex. FLR-3.1, p. 32.) Presently, IAWC includes

all amounts owed in the DPAs it extends its customers. (IAWC Ex. FLR-1.0 (CORR.), p. 9.) IAWC states permitting the Company to treat a DPA as in default only when amounts for utility service are unpaid would require extensive customization of the Company's current billing software. (*Id.*, p. 9.) IAWC asserts the added cost borne by the general body of ratepayers would outweigh the benefit to a small group of customers. IAWC points to this Subsection as exemplifying the necessity for a two-year compliance provision such as that proposed by Nicor, Section 280.15.

Subsection 280.120(b)

Subsection 280.120(b)(1)

IAWC Position

IAWC proposes revising Subsection 280.120(b)(1) to clarify that customers who request a deferred payment arrangement are eligible to receive one. (IAWC Ex. FLR-1.0 (CORR.), pp. 8-9; IAWC Ex. FLR-3.0, p. 2; IAWC Ex. FLR-3.1, p. 32.) IAWC believes the Subsection as proposed is unclear as to whether the utility must make a "mandatory offering" of a DPA to all customers who are eligible to receive one under the requirements of (b)(1), or whether the utility is only required to offer one to those eligible customers who request assistance. (IAWC Ex. FLR-2.0, pp. 9-10; IAWC Ex. FLR-3.0, p. 2.) Subsection (b)(1) as currently drafted is of particular concern to IAWC because the Company receives many calls a day and liberally offers thousands of DPAs every year. (Tr., pp. 571, 572, 577.) IAWC witness Mr. Ruckman testified at the evidentiary hearing that IAWC offers its customers DPAs whenever they need help, and he could think of no complaints elevated to ICC Staff regarding allegations that IAWC has been uncooperative in this respect. (*Id.*, pp. 577-78.) IAWC takes the position that, despite its policy of offering DPAs liberally, it is not cost-effective to require the Company to offer a DPA to every customer who might be eligible for one, but who does not ask for one. IAWC points out that GCI agree with IAWC's concern and have proposed revising Subsection 280.160(b)(1) to clarify that only customers who contact the utility regarding delinquencies should be offered a DPA by the utility.

IAWC believes Staff's assertion the titles to Subsections 280.120(b)(1) and (b)(2) make clear when a DPA must be offered by the utility because they include the terms "mandatory" and "optional" ignores the Company's particular concern regarding *when* a DPA offer is "mandatory" under Subsection 280.160(b)(1). IAWC reiterates that the question remains—must the utility seek out all who are eligible to receive a DPA and offer one, or is it mandated to offer a DPA only to those eligible customers who contact the utility seeking assistance? (IAWC Ex. FLR-2.0, pp. 9-10; IAWC Ex. FLR-3.0, p. 2.)

IAWC also proposes deleting in its entirety Subsection 280.160(b)(1)(A). (IAWC Ex. FLR-3.1, p. 33.) IAWC states it establishes payment arrangements with the intent that the customer will pay the agreed installment amount each billing period, in addition to the current charge. IAWC asserts any variance from such an agreement should not be considered a completed agreement. IAWC thus takes the position that DPAs are

special accommodations made to certain customers, and implementing such arrangements and continuing to process those whose terms are not met increases the cost to all customers and incentivizes noncompliance. (IAWC Ex. FLR-1.0 (CORR.), p. 9.) IAWC believes the potential benefit to a small group of customers does not justify the additional expense that all customers will bear. (*Id.*, p. 10.)

IAWC does not contest proposed Subsection 280.160(b)(1)(B).

Subsection 280.120(b)(2)

IAWC Position

IAWC proposes revising Subsections 280.160(b)(2)(A), (B) and (C) to apply to all “past due amounts,” rather than only “past due amounts for utility service,” for the reasons supporting the Company’s position regarding Subsection 280.120(a). (IAWC Ex. FLR-1.0 (CORR.), p. 9; IAWC Ex. FLR-3.1, p. 33.)

Subsection 280.120(c)

IAWC Position

IAWC proposes revising Subsection 280.160(c) to provide that DPAs shall include amounts owing for utility service, but need not *only* include those amounts, for the reasons supporting the Company’s position regarding Subsection 280.120(a). (IAWC Ex. FLR-1.0 (CORR.), p. 9; IAWC Ex. FLR-3.1, p. 33.)

Subsection 280.120(d)

IAWC Position

IAWC proposes revising Subsection 280.120(d) to permit the utility, at its discretion, to automatically transfer an existing DPA or to cancel the existing DPA and establish a new DPA at the premises. (IAWC Ex. FLR-3.1, p. 33.) IAWC states, because DPAs are specific to a customer account at a specific premises, the Company is unable to “automatically” transfer a DPA to a new address, and therefore currently transfers only amounts due on a DPA, rather than the agreement itself. IAWC states to perform such a transition requires manual intervention on the part of the Company. (IAWC Ex. FLR-1.0 (CORR.), pp. 9-10.) Thus, IAWC believes the benefit resulting to a small group of customers does not justify the additional expense that all customers would bear. (*Id.*, p. 10.)

IAWC does not disagree with Staff that Subsection 280.120(d) as currently drafted provides the flexibility the Company seeks. However, IAWC submits the better course would be to make explicit in the rule that the utility enjoys such flexibility.

Finally, IAWC notes Staff states in its Initial Brief it will not agree to any revision

that would allow a utility to impose new DPA terms harsher than those existing at the time of transfer. (ICC Staff Initial Br, pp. 54-55.) IAWC asserts that is not the intent of IAWC's proposed revision. Rather, IAWC simply recommends that utilities be permitted the discretion to associate new premises with DPA terms already existing in relation to a customer's prior premises either automatically or manually, whichever method corresponds to the utility's customer information and billing systems, to permit full compliance with revised Part 280. Accordingly, on this point, IAWC believes the Company and Staff agree.

Subsection 280.120(e)

Subsection 280.120(e)(1)

IAWC Position

IAWC does not contest Subsection 280.120(e)(1) of Staff's Proposed Rule.

Subsection 280.120(e)(2)

IAWC Position

IAWC proposes deleting in its entirety Subsection 280.120(e)(2). (IAWC Ex. FLR-3.1, pp. 33-34.) IAWC states the implementation of that provision would require customizations of its customer systems resulting in added costs for ratepayers. (IAWC Ex. FLR-1.0 (CORR.), p. 10.) IAWC asserts the benefit of the additional notification required by this proposed subsection to a small group of customers does not justify the additional expense that all customers would bear. (*Id.*, p. 10.)

In response to Staff's assertions the notification requirement will reduce customer service calls or field visits for disconnection as well as customer confusion, IAWC contends Staff has provided no empirical evidentiary support for these assertions. Rather, IAWC argues, given that reinstatement amounts are subject to change, requiring utilities to issue notification of a defaulted DPA on the next bill statement or by separate written notice, which notification includes the amount required to reinstate the DPA, actually could increase customer confusion and, as a result, customer service calls. (IAWC Reply Br., pp. 35-36.)

Subsection 280.120(f)

Subsection 280.120(f)(1)

IAWC Position

IAWC proposes revising Subsection 280.120(f)(1) to apply to all "past due amounts" rather than "past due amounts for utility service" for the reasons supporting the Company's position regarding Subsections 280.120(a) and (b)(2). (IAWC Ex. FLR-

1.0 (CORR.), p. 9; IAWC Ex. FLR-3.1, p. 33.)

Subsections 280.120(f)(2) and (3).

IAWC Position

IAWC does not contest Subsections 280.120(f)(2) or (3) of Staff's Proposed Rule.

Subsection 280.120(g)

IAWC Position

IAWC proposes revising Subsection 280.120(g) to provide that the negotiated 4 to 12 billing cycles provision applies to gas and electric utility service, and adding language to provide that, for water and wastewater utility service, the negotiated time period shall be between 2 and 12 billing cycles. (IAWC Ex. FLR-3.1, p. 34.) IAWC believes the originally proposed generally applicable 4 to 12 month period is excessive with respect to water and wastewater utility service given the typical bill amount for those services. (IAWC Ex. FLR-1.0 (CORR.), p. 10.) Nonetheless, IAWC states it is always willing to work with customers on billing matters, and therefore does negotiate longer DPAs if the circumstances warrant an extended period. (*Id.*, p. 10.) IAWC states it should be permitted to continue to do so with the flexibility IAWC and its customers currently enjoy.

Subsections 280.120(h) through (m)

IAWC Position

IAWC does not contest Subsections 280.120(h) through (m) of Staff's Proposed Rule.

Section 280.125 Deferred Payment Arrangements for Low Income Customers

New Subsection 280.125(a)

IAWC Position

IAWC proposes adding a new subsection (a) to Section 280.125 which provides the Section does not apply to customers of water, sewer or water and sewer utilities. (IAWC Ex. FLR-3.1, p. 36.) For the same reasons offered in support of its position regarding Section 280.20, "Low Income Customer," IAWC takes the position that Section 280.125 and the other "Low Income Customer" provisions of Staff's Proposed Rule should not apply to water and wastewater utilities. IAWC does not otherwise contest Section 280.125 of Staff's Proposed Rule.

SUBPART I: DISCONNECTION

Section 280.130 Disconnection of Service

Subsections 280.130(a) and (b)

IAWC Position

IAWC does not contest Subsections 280.130(a) or (b) of Staff's Proposed Rule.

Subsection 280.130(c)

Subsections 280.130(c)(1) and (2)

IAWC Position

IAWC does not contest Subsections 280.130(c)(1) or (2) of Staff's Proposed Rule.

Subsection 280.130(c)(3)

IAWC Position

IAWC proposes revising Subsection 280.130(c)(3) to continue to prohibit disconnection of utility service related to charges for another type of service *unless* the charges are for water or sewer service and water and sewer utility service are provided by the same utility. (IAWC Ex. FLR-3.1, p. 38.) IAWC witness Mr. Ruckman testified it is very expensive and time-consuming to shut-off sewer-only service, and, as a result, many customers do not pay their sewer bills because they know there are no immediate consequences. (IAWC Ex. FLR-1.0 (CORR.), p. 11.) IAWC takes the position that combined water and sewer utilities should be exempt from Subsection 280.130(c)(3). (*Id.*, p. 11.)

IAWC notes Staff agrees. In its Initial Brief, Staff states it "recognizes that a change will need to be made to its proposed language to reflect the unique condition of sewer service." (ICC Staff Initial Br., p. 62.) It further recognizes "that sewer service, with its entirely different characteristics from the other services the Commission regulates, presents a uniquely difficult (and perhaps from a public health standpoint, hazardous) challenged for disconnection." (*Id.*, p. 63.) Accordingly, Staff recommends revising Subsection 280.130(c)(3) consistent with IAWC's proposal. (*Id.*)

Subsections 280.130(c)(4) and (5)

IAWC Position

IAWC does not contest Subsections 280.130(c)(4) or (5) of Staff's Proposed

Rule.

Subsection 280.130(d)

IAWC Position

IAWC does not contest Subsection 280.130(d) of Staff's Proposed Rule.

Subsection 280.130(e)

IAWC Position

IAWC does not contest Subsection 280.130(e) of Staff's Proposed Rule.

New Subsection 280.130(e)(5)

IAWC Position

IAWC opposes AARP's proposal to add a new subsection to Subsection 280.130(e) which would require a utility employee to make a reasonable effort to contact the customer or a responsible person on the premises prior to disconnection, and to announce the purpose of his presence, except where the safety of the employee is endangered. IAWC likewise opposes GCI's similar recommendation to add a new subsection to Section 280.130 which would require personal contact with a customer at the premises prior to disconnection. IAWC points out that GCI's proposed language does not account for the safety of the utility employee. In opposition to those recommendations, IAWC first argues face-to-face contact is expensive and often creates a safety issue for the employee. IAWC agrees with Staff that utilities and the unions representing their workers are far better judges of the risks or lack of risks involved with personal contact at the time of disconnection. Next, IAWC asserts, in households where all of the adults are employed, it is often the case that no adult is present at the premises during business hours. (IAWC Ex. FLR-2.0, p. 10.) IAWC also argues that, although AARP contends the current Part 280 incorporates the face-to-face contact it advocates, the presence of that requirement in the current rule, alone, is not a basis for its retention in the revised rule. Finally, IAWC points out that GCI witness Ms. Alexander, on whose testimony AARP and GCI rely to support their proposals, testified "[y]ou can't guarantee with a knock of the door that all things will be made right." (Tr., p. 278.)

Nevertheless, IAWC states that it recognizes there may be circumstances where face-to-face contact with a customer prior to disconnection would be appropriate. It is IAWC's position that the rule should not require of the utility such contact in all situations, but should permit the utility discretion to determine if personal contact is desirable. (*Id.*, pp. 10-11.)

Subsection 280.130(f)

IAWC Position

IAWC does not contest Subsection 280.130(f) of Staff's Proposed Rule.

Subsection 280.130(g)

Subsections 280.130(g)(1) through (4)

IAWC Position

IAWC does not contest Subsections 280.103(g)(1) through (4) of Staff's Proposed Rule.

New Subsection 280.130(g)(5)

IAWC Position

IAWC proposes adding a new Subsection 280.130(g)(5) providing that the customer's regular monthly bill shall not be considered a new disconnection notice or operate to extend the due date of a previously issued disconnection notice. (IAWC Ex. FLR-3.1, p. 39.) Staff's Proposed Section 280.130(g)(3) provides that a disconnection notice shall remain effective for 45 days after it is sent or delivered. IAWC believes that language leaves open the possibility of a regular monthly bill that is automatically generated by the utility being deemed a "new notice" and thus restarting the 45-day period. IAWC contends this could lead to customer confusion and frustration as bill due dates and collection actions begin to overlap. (IAWC Ex. FLR-1.0 (CORR.), p. 12.) Accordingly, IAWC believes clarifying language is necessary.

Subsection 280.130(h)

IAWC Position

IAWC does not contest Subsection 280.130(h) of Staff's Proposed Rule.

Subsection 280.130(i)

IAWC Position

IAWC proposes revising Subsection 280.130(i), including subsections (i)(1), (2) and (4), to permit the utility to leave a door tag, as an alternative to the warning letter provided for in the subsection, in the case of a disconnection notice related to occupant usage without a valid customer. (IAWC Ex. FLR-1.0 (CORR.), p. 11; IAWC Ex. FLR-3.1, p. 40.) IAWC also proposes revising subsection (i)(2) to make discretionary the utility's sending a duplicate warning letter to the landlord or property manager of the

premises at issue, if known. (IAWC Ex. FLR-3.1, p. 40.) IAWC believes Staff's proposed requirement adds cost but little benefit because the utility does not benefit from notifying the landlord regarding unauthorized usage by a tenant unless that landlord can be held responsible for the usage. (IAWC FLR-1.0 (CORR.), pp. 11-12.)

Subsection 280.130(j)

IAWC Position

IAWC proposes deleting Subsection 280.130(j) because IAWC believes such a requirement could result in abuse by encouraging customers to wait until receiving the warning call before reacting to a disconnection notice. (IAWC Ex. FLR-1.0 (CORR.), p. 12; IAWC Ex. FLR-3.1, pp. 40-41.)

Subsections 280.130(k) through (q)

IAWC Position

IAWC does not contest Subsections 280.130(k) through (q) of Staff's Proposed Rule.

Section 280.135 Winter Disconnection of Residential Heating Services, December 1 through March 31

IAWC Position

IAWC does not contest Section 280.135 of Staff's Proposed Rule.

Section 280.140 Disconnection for Lack of Access to Multi-Meter Premises

IAWC Position

IAWC does not contest Section 280.140 of Staff's Proposed Rule.

IAWC opposes GCI's proposed deletion of Section 280.140 in its entirety. IAWC argues that deletion of this provision incentivizes tenants in multi-unit buildings with one shut-off valve to not pay their utility bill as long as one tenant pays. IAWC believes this is not fair to paying customers for obvious reasons. IAWC contends that, when some customers do not pay their bills, all customers absorb the resulting costs. For this reason, the Company takes the position that utilities have an obligation to limit their uncollectibles and the only realistic enforcement mechanism for collecting past due amounts, and thus controlling uncollectibles, is disconnection of service. (IAWC Ex. FLR-2.0 (CORR.), p. 11.)

IAWC notes GCI claim building disconnections for debt collection purposes differ in nature than disconnections for safety-related inspections or the inability to gain

access to meters. (GCI Corr. Initial Br., p. 70.) However, IAWC points out, GCI recommend wholesale deletion of Section 280.140. IAWC contends it is apparent GCI agree multi-meter premises disconnections related to access for regulatory purposes and meter readings are appropriate. Therefore, IAWC argues their proposed wholesale deletion of Section 280.140 should be rejected.

IAWC also takes issue with GCI's assertions that support for proposed Section 280.140 "focuses on the limits on what utilities can do to gain access. But those circumstances are attributable mainly to system design decisions (inside meters) regarding which their customers had no input," and "[i]t is obvious, notwithstanding any inconvenient configurations, the utility decided to install meters for the new tenant-customers in locations that it now complains it cannot access or in locations for which it did not assure access." (GCI Corr. Initial Br, p. 70.) IAWC contends those assertions are incorrect. IAWC points to its own tariffs as evidence that customers do have input regarding the location of utility meters. (ILL. C.C. No. 23, Original Sheet No. 9, Sections 10(D) and (G) (IAWC's Rules, Regulations and Conditions of Water Service).) IAWC states customers may have the option to install a single, or "master," meter or to install individual meters for the various tenants of their building. Moreover, IAWC explains, customers can request that their meter or meters be installed outside, if the meters can be properly protected from the elements. IAWC states the customer also has an obligation to ensure access. (*Id.*) Thus, IAWC contends, customers do have input into the location of their meters.

IAWC further asserts that utilities, and water and sewer utilities in particular, however, may not have had input into building changes that affect meter locations. This would be particularly true where utilities that acquire other utilities had no input into the meter locations of the acquired utility. Further, IAWC contends, utilities may lack any input into how buildings are used or subdivided by current owners and tenants. (IAWC Ex. FLR-2.0, p. 11.) IAWC witness Mr. Ruckman testified that older buildings may be historic and, as such, renovations of those buildings must comply with specific criteria to preserve the historic designation. (*Id.*) Mr. Ruckman further testified some multi-meter premises were not originally designed to house multiple tenants, but are later retrofitted for that purpose. (*Id.*) In these circumstances, IAWC contends, while the water and sewer utilities may have installed the original shut-off valve, they have no control over later subdivisions or renovations resulting in a multi-meter premises with only one shut-off valve. IAWC further contends the same is true with respect to older strip malls; when original tenants vacate the premises, the facilities are reconfigured for new tenants. (*Id.*) IAWC takes the position, in such situations, absent Section 280.140 as proposed by Staff, only one tenant need pay to prevent the water or sewer utility from being able to disconnect service or threaten disconnection in order to collect funds due. IAWC argues GCI's proposal does not take into account these considerations.

IAWC also notes that GCI submitted the testimony of City of Chicago witness Mr. McKenzie in support of its recommended deletion of proposed Section 280.140. IAWC points out that Mr. McKenzie stated he has never testified in a regulatory commission proceeding specifically regarding a water utility or water utilities, and he has performed

no study of the cost of service impacts of his recommendation on water utilities. (IAWC Cross Ex. 4.) As such, IAWC asserts his recommendation should be rejected as it applies to water and wastewater utilities.

Section 280.150 Disconnection of Master-Metered Apartment Buildings

IAWC Position

IAWC does not contest Section 280.150 of Staff's Proposed Rule.

SUBPART J: MEDICAL CERTIFICATION

Section 280.160 Medical Certification

Subsection 280.160(a)

IAWC Position

IAWC proposes revising subsection 280.160(a) to refer to the opportunity for the customer to retire past due amounts by DPA rather than MPA. (IAWC Ex. FLR-3.1, p. 48.) IAWC takes the position that DPAs as a result of medical certification are no different than other payment arrangements. Therefore, IAWC believes it is unnecessary to separately define MPAs or to refer to other than DPAs in Subsection 280.160(a). (IAWC Ex. FLR-1.0 (CORR.), p. 12.)

Subsections 280.160(b) and (c)

IAWC Position

IAWC does not contest Subsections 280.160(b) or (c) of Staff's Proposed Rule.

Subsection 280.160(d)

Subsections 280.160(d)(1) through (3)

IAWC Position

IAWC does not contest Subsections 280.160(d)(1) through (3) of Staff's Proposed Rule.

Subsection 280.160(d)(4)

IAWC Position

IAWC proposes revising Subsection 280.160(d)(4) to require that the medical

certificate include a detailed explanation of why the discontinuation of the specific utility service at issue will cause a life-threatening medical condition for the customer or another resident at the premises. (IAWC Ex. FLR-3.1, p. 49.) IAWC points out that Staff's Proposed Rule does not limit medical certifications. However, if the customer defaults on or fails to enter into a deferred payment arrangement offered by the utility as a result of a medical certification, IAWC believes that they should not be able to obtain an additional medical certification in order to avoid disconnection of service. (IAWC Ex. FLR-1.0 (CORR.), p. 12.) IAWC further asserts, for the reasons offered in support of its proposed definition of "Medical necessity" in Section 280.20, it is necessary to define "medical necessity" to further limit medical certifications and prevent abuse. (IAWC Ex. FLR-1.0 (CORR.), p. 12; IAWC Ex. FLR-2.0, p. 12.) IAWC states it often receives medical certificates from doctors on the basis of non-life threatening conditions that have no relation to receipt of water or wastewater utility service. (IAWC Ex. FLR-1.0 (CORR.), pp. 12-13; IAWC Ex. FLR-2.0, p. 12.) From this IAWC concludes some customers may abuse the system simply to avoid paying their bill. (IAWC Ex. FLR-1.0 (CORR.), p. 13.) IAWC argues the purpose of the medical certification rule is to give customers more time to pay their utility bills where disconnection of the utility service could be life-threatening. IAWC contends that this is distinguishable from a person who has a medical condition. IAWC further contends, simply because a person suffers from a medical condition, that does not mean that person should qualify for a medical certificate. IAWC believes doctors do not always make this distinction, and argues to assume all doctors are familiar with the medical certification process in Part 280 is not realistic. Thus, IAWC takes the position that the rule needs to provide more guidance by including a definition of medical necessity which correlates the discontinuation of service to the life-threatening medical condition. IAWC believes this will assist doctors in determining just what they are certifying. (IAWC Ex. FLR-2.0, pp. 12-13.)

Subsection 280.160(e)

IAWC Position

IAWC proposes revising Subsection 280.160(e) to allow the certificate to be presented up to 14 days post disconnection, and beyond that period at the utility's discretion. (IAWC Ex. FLR-3.1, p. 49.) IAWC's proposed revision would result in the elimination of Subsection 280.160(e)(1).

Subsections 280.160(f) and (g)

IAWC Position

IAWC does not contest Subsections 280.160(f) or (g) of Staff's Proposed Rule.

Subsection 280.160(h)

IAWC Position

IAWC proposes revising Subsection 280.160(h) to correspond to Section 280.120 regarding DPAs, rather than setting forth new rules applicable to MPAs, for the reasons offered by the Company in support of its position regarding Subsection 280.160(a). (IAWC Ex. FLR-1.0 (CORR.), p. 12; IAWC Ex. FLR-3.1, pp. 49-50.)

In response to Staff's assertion that the MPA process demands greater structure than the current rule provides, IAWC questions why Staff's proposed revisions to the DPA rules, proposed Section 280.120, do not provide the greater structure Staff seeks. IAWC reiterates there is no reason to distinguish types of payment arrangements under the revised Part 280. IAWC takes the position that it is important that the rules provide for the establishment of payment arrangements, while permitting utilities and their customers flexibility in fashioning arrangements which best suit the needs of both parties.

IAWC also points out Staff's Proposed Rule mandates a 12-month repayment cycle for DPAs resulting from medical certifications. IAWC believes the utility and the customer should have the freedom to negotiate a shorter period, with 12 months being the maximum period permissible. Therefore, the Company also proposes revising Subsection 280.160(h) to reflect this flexibility. (IAWC Ex. FLR-1.0 (CORR.), p. 13; IAWC Ex. FLR-3.1, pp. 49-50.) IAWC's proposed revisions to Subsection 280.160(h), if accepted, would result the elimination of subsections (h)(1) through (3). (IAWC Ex. FLR-3.1, pp. 49-50.)

Subsection 280.160(i)

IAWC Position

IAWC is concerned this Subsection, as written, will allow for chronic recertification of medical certifications when customers have not paid off balances from previous certifications. IAWC takes the position that a customer who defaults on or fails to enter into an agreement should not be able to obtain an additional medical certificate to avoid disconnection of service. (IAWC Ex. FLR-1.0 (CORR.), p. 12.)

In response to Staff's defense of Subsection 280.160(i) as proposed that it protects vulnerable populations with chronic illnesses, IAWC points out the testimony of GCI witness Ms. Marcellin-Reme, on which Staff relies in support of its position, does not reference "vulnerable populations with chronic illnesses," nor define such population, or indicate how many customers it includes. IAWC respectfully submits that individuals with chronic illnesses are distinguishable from those for whom the uninterrupted service of a particular utility is "medically necessary" as a result of a "medical emergency." IAWC contends allowing for annual recertification to protect this undefined population overlooks the purpose of the rule governing medical

certifications—to temporarily prohibit disconnection in the event of a “medical emergency.”

SUBPART K: RECONNECTION

Section 280.170 Timely Reconnection of Service

Subsection 280.170(a)

IAWC Position

IAWC does not contest Section 280.170(a) of Staff's Proposed Rule.

Subsection 280.170(b)

Subsections 280.170(b)(1) and (2)

IAWC Position

IAWC does not contest Subsections 280.170(b)(1) or (2) of Staff's Proposed Rule.

Subsection 280.170(b)(3)

IAWC Position

IAWC agrees with Staff's proposed four-day reconnection period. The Company asserts that, while reconnecting water service within one day is not generally a problem, reconnecting sewer service that has been discontinued is much more involved. IAWC explains this is because sewer services do not have shut-off valves. As a result, discontinuance of sewer service is labor intensive and disruptive, requiring a backhoe to dig so that the lines can be exposed and plugged. IAWC further explains that reconnection is equally time-consuming as it requires a second dig, unplugging the sewer connection and restoring the property. (IAWC Ex. FLR-2.0, p. 13.) IAWC points out that GCI witness Ms. Alexander acknowledged the resultant costs associated with reconnection of service within a specific time period. (Tr., p. 241.)

In response to AARP's proposed one-day reconnection period for water and waste water utilities, IAWC reiterates Staff's proposed 4-day reconnection period is appropriate for the reasons it offered in support of proposed Section 280.170(b)(3). IAWC also points out that AARP's witness who testified regarding AARP's proposed 1-day reconnection period, Mr. Scott Musser, has no experience or education related to the operation, management, billing, customer service or customer relations of water utilities in Illinois, has not previously testified before the Commission regarding water utilities, and has performed no studies of the cost of service impacts of his recommendations on water utilities. (IAWC Cross Ex. 3.) Accordingly, IAWC contends

Mr. Musser is not qualified to make such a recommendation. IAWC argues AARP's recommendation as it applies to water and wastewater utilities should be accorded no weight.

IAWC opposes GCI's recommendation that utilities be required to reconnect service within 48 hours after the customer has remedied the cause for disconnection, with an option for reconnection within 24 hours at a fee. IAWC argues GCI's assertion that the record evidence suggests that the new rule would provide an incentive for electric, water and gas utilities to slow down the reconnection process as compared to the current practice, and to not maintain an employee complement sufficient to provide utility service, is baseless. IAWC contends GCI cite no evidence in support of that claim, and do not even attempt to argue that utilities aspire to slow down reconnection times and accordingly forego revenues.

IAWC also points out that GCI state there is no dispute the expense associated with these additional hires, if needed, would not be recovered in future rate cases. (GCI Corr. Initial Br., p. 87.) Given this admission, IAWC contends it is unclear why GCI believe Staff's proposed 4-day timeline would somehow incentivize utilities to not maintain an employee complement sufficient to provide utility service.

Finally, IAWC contends GCI's 48-hour proposal ignores the practicalities of connection and reconnection of water and sewer utilities, explained above.

Section 280.180 Reconnection of Former Residential Customers for the Heating Season

IAWC Position

IAWC does not contest Section 280.180 of Staff's Proposed Rule.

SUBPART L: UNAUTHORIZED SERVICE USAGE

Section 280.190 Treatment of Illegal Taps

IAWC Position

IAWC does not contest Section 280.190 of Staff's Proposed Rule.

Section 280.200 Tampering

Subsection 280.200(a)

IAWC Position

IAWC proposes revising Subsection 280.200(a) to permit the utility recourse both

when the customer has benefited from unauthorized usage of utility service and when the customer has damaged the utility's service equipment for the reasons set forth by the Company in support of its position regarding the definition of "Tampering" in Section 280.20. (IAWC Ex. FLR-3.1, p. 56.) Specifically, IAWC argues sometimes tampering does not involve water theft, but rather unauthorized use of the utility's facilities which causes equipment damage. As such, it is IAWC's position that Section 280.200 should govern both types of tampering, and the Section should allow utilities to seek restitution or discontinue service when utility equipment has been damaged as a result of tampering. (IAWC Ex. FLR-2.0, p. 13.)

Subsection 280.200(b)

IAWC Position

IAWC proposes revising Subsection 280.200(b) to require the utility to prove that tampering has occurred and that the customer benefited from the same *or* that damage to the utility's service equipment has resulted, for the reasons offered by the Company in support of its position regarding Section 280.20, "Tampering," and Subsection 280.200(a). (IAWC Ex. FLR-2.0, p. 13; IAWC Ex. FLR-3.1, p. 56.) IAWC points out that no party submitted testimony opposing IAWC's proposal.

Subsections 280.200(c) through (e)

IAWC Position

IAWC does not contest Subsections 280.200(c) through (e) of Staff's Proposed Rule.

Subsection 280.200(f)

IAWC Position

IAWC proposes revising Subsection 280.200(f) (incorrectly labeled in Staff's Proposed Rule as (g)), regarding timing, to address IAWC's concern that tampering should encompass both unauthorized usage of utility service and damage to service equipment for the reasons set forth by the Company in support of its position regarding Section 280.20, "Tampering," and Subsection 280.200(a). IAWC believes that a current customer should not have to pay for unauthorized usage or damage to service equipment which is attributable to a previous owner. (IAWC Ex. FLR-2.0, p. 13; IAWC Ex. FLR-3.1, p. 57.)

Subsection 280.200(g)

IAWC Position

IAWC does not contest Subsection 280.200(g) (incorrectly labeled subsection (f))

of Staff's Proposed Rule.

Section 280.205 Non-Residential Tampering

IAWC Position

IAWC does not contest Section 280.205 of Staff's Proposed Rule.

Section 280.210 Payment Avoidance by Location (PAL)

IAWC Position

IAWC states that its position regarding proposed Section 280.210 assumes acceptance of Section 280.210 as set forth in Staff Proposed Rule, Staff Ex. 3.0, Attachment A, and in the Joint Pretrial Outline filed by Staff, which represent substantial revision to Section 280.210 as originally proposed by Staff on rebuttal, Staff Ex. 2.0, Attachment J. IAWC states, if Section 280.210 of Staff's Proposed Rule is rejected, IAWC's original revisions to Section 280.210, as set forth in IAWC Ex. FLR-3.1, pp. 57-60, should be adopted. This would include IAWC's proposed deletion of Subsection 280.210(d)(1)(C), which required, before a utility could deny service in a PAL situation, a showing that the previous customers must still reside at the premises. (IAWC Ex. FLR-3.1, p. 59.) IAWC contends it would be difficult, if not impossible, for the utility to make that showing when a new application for service is received. (IAWC Ex. FLR-1.0 (CORR.), p. 13.) Formerly proposed Subsection 280.210(d)(1)(C) has been eliminated from the current version of Staff's Proposed Rule.

IAWC counters GCI's wholesale rejection of the PAL rules set forth in Staff's Proposed Rule. In response to GCI's contention that those rules are contrary to fundamental contract law fraud principles, IAWC questions whether such principles are applicable given that the Commission has the authority to enact rules which override common law contract fraud principles and that, under well-established Illinois law, it is the tariff, not common law contract principles, that governs the relationship between utilities and their customers. IAWC also notes GCI's contention the PAL rules are inappropriate because utilities may employ other debt collection procedures to collect the funds due them. IAWC argues this ignores that all ratepayers absorb the costs of unpaid bills and, as such, utilities have an obligation to the entire body of their ratepayers to limit their uncollectibles. (IAWC Ex. FLR-2.0, p. 11.) IAWC points out that GCI acknowledges gas and electric utilities, but not water and sewer utilities, can collect abnormal uncollectibles through uncollectibles riders pursuant to Illinois law.

Subsections 280.210(a) through (c)

IAWC Position

IAWC does not contest Subsections 280.210(a) through (c) of Staff's Proposed Rule.

Subsection 280.210(d)

Subsections 280.210(d)(1) and (2)

IAWC Position

IAWC proposes deleting Subsection 280.210(d)(1) and revising Subsection 280.210(d)(2) to require notification by writing sent to the premises which is the subject of the PAL allegation. The Company believes this will simplify and clarify the requirements of those subsections. (IAWC Ex. FLR-1.0 (CORR.), p. 13; IAWC Ex. FLR-3.1, p. 58 (suggesting revision to formerly proposed Subsections 280.210(c)(1) and (2), now proposed Subsections 280.210(d)(1) and (2)).)

Subsection 280.210(d)(3)

IAWC Position

IAWC proposes revising Subsection 280.210(d)(3) to require the requisite notice to be sent no later than two business days “after” the utility’s decision to invoke Subsection 280.210’s protections, rather than two business days “of” that decision, as the currently proposed language in Subsection 280.210(d)(3) provides. IAWC believes this revision will make more clear the requirement of Subsection 280.210(d)(3). (IAWC Ex. FLR-3.0, p. 3; IAWC Ex. FLR-3.1, p. 58 (suggesting revision to formerly proposed Subsection 280.210(c)(3), now proposed Section 280.210(d)(3)).)

Subsections 280.210(d)(4) through (6)

IAWC Position

IAWC does not contest Subsections 280.210(d)(4) through (6) of Staff’s Proposed Rule.

Subsection 280.210(d)(7)

IAWC Position

IAWC proposes eliminating Subsection 280.210(d)(7) because it believes it would necessitate modifications to the Company’s customer information system which would increase administrative costs and the overall cost of service in a manner that would outweigh any perceived ratepayer benefit. (IAWC Ex. FLR-1.0 (CORR.), p. 13; IAWC Ex. FLR-3.0, p. 2; IAWC Ex. FLR-3.1, p. 58 (suggesting revision to formerly proposed Subsection 280.210(c)(7), now proposed Subsection 280.210(d)(7)).)

New Subsection to 280.210(d)

IAWC Position

IAWC proposes adding a new subsection to Subsection 280.210(d) which would require the utility to send a duplicate copy of notification of a PAL allegation to the landlord or property manager of the premises, if the premises is rental property and the identification of that individual is known to the utility at the time the original PAL notification is sent. (IAWC Ex. FLR-3.1 p. 58.) This proposal accords with IAWC's proposal to add a new subsection to Subsection 280.210(f) permitting a utility with proof of occurrence of PAL the discretion to require the landlord or property manager to take service in his own name. IAWC states such notification would make the landlord or property manager aware of any PAL relating to his property. (IAWC Ex. FLR-3.0, pp. 2-3.) The Company believes the landlord or property manager's awareness may reduce, if not eliminate altogether, future instances of PAL at the premises, thereby reducing the cost of service to all ratepayers. (IAWC Ex. FLR-2.0, p. 14.)

Subsection 280.210(e)

IAWC Position

IAWC does not contest Subsection 280.210(e) of Staff's Proposed Rule (incorrectly labeled as second subsection (d) in Staff's Proposed Rule).

New Subsection in 280.210(f)

IAWC Position

IAWC proposes adding a new subsection to Subsection 280.210(f) which would provide additional protection to a utility who has proven PAL has occurred at premises which are rental property. Specifically, IAWC's proposed new subsection would permit a utility which is entitled to collect a deposit pursuant to Section 280.210(e) for a PAL occurrence to require the landlord or property manager of the premises, if known, to take service in their own name. (IAWC Ex. FLR-1.0 (CORR.), pp. 13-14; IAWC Ex. FLR-3.1, pp. 59-60.) IAWC believes the landlord or property manager's awareness and responsibility for PAL may help to reduce, if not eliminate altogether, future instances of PAL at the premises. IAWC further believes this would protect customers from subsidizing service to such properties, and would reduce customer disruptions from shut-offs for nonpayment as well as uncollectibles. IAWC contends, as a result, it would reduce the overall cost of service to all ratepayers. (IAWC Ex. FLR-2.0, p. 14; IAWC Ex. FLR-3.0, pp. 2-3.)

SUBPART M: COMPLAINT PROCEDURES

Section 280.220 Utility Complaint Process

IAWC Position

IAWC does not contest Section 280.220 of Staff's Proposed Rule.

Section 280.230 Commission Complaint Process

IAWC Position

IAWC does not contest Section 280.230 of Staff's Proposed Rule.

SUBPART N: INFORMATION

Section 280.240 Public Notice of Commission Rules

IAWC Position

IAWC proposes revising Section 280.240 to permit the utility to provide the requisite notice by *either* annual mailing or by language on the utility's website, which IAWC contends is a more cost-effective approach. (IAWC Ex. FLR-2.0, p. 14; IAWC Ex. FLR-3.1, pp. 65-66.) IAWC proposes further revising Section 280.240 to provide, if the utility chooses the latter means of notice (website), it shall annually include a statement on a regular monthly bill that the Commission's rules governing eligibility for utility service, deposits, billing, payment refunds and disconnection of service are posted in the utility's office and on its website and will be mailed to customers upon request. (IAWC Ex. FLR-3.1, pp. 65-66.) IAWC asserts annual mailing of the notice in Appendix C is neither cost effective nor appropriate when all utilities are required to make the annual mailing, resulting in customers of multiple regulated utilities receiving multiple copies of the notice each year and paying for the costs of those multiple copies in multiple sets of utility rates. (IAWC Ex. FLR-1.0 (CORR.), p. 14; IAWC Ex. FLR-2.0, p. 14.) IAWC also states annual mailing is costly. Although Section 280.240 of Staff's Proposed Rule does not specify the means of delivering the annual written notice, IAWC believes the length of Appendix C is such that it would require a bill insert or separate mailing. IAWC's witness Mr. Ruckman testified that every time IAWC sends a separate mailing to its customers, it costs an additional \$0.30 per customer, in addition to other added administrative costs. (IAWC Ex. FLR-2.0, p. 14.)

IAWC alternately proposes the following, more brief language should suffice to provide the requisite notice: "The ICC rules governing eligibility for utility service, deposits, billing, payment refunds and disconnection of service are posted in our offices and will be mailed to customers on request." (*Id.*, p. 15.) IAWC believes this would allow utilities more flexibility in providing the notice (*i.e.* by providing the notice on

customers' bills instead of by separate mailing). IAWC contends this would allow utilities to effectively communicate the requirement of Section 280.240 without incurring substantial additional costs which are ultimately borne by ratepayers. (*Id.*, pp. 14-15.)

IAWC notes Staff, in its Initial Brief, accepted Ameren's proposal to add the following language to the end of proposed Section 280.40: "Such notice to customers may be in the form of a bill message where customers will be provided the opportunity to obtain copies of the Commission's rules upon request or by accessing the utility's website." (ICC Staff Initial Br., p. 79.) IAWC believes this revision substantially aligns with IAWC's proposed revision to Section 280.40. (IAWC Ex. FLR-3.1, pp. 65-66.) Accordingly, IAWC agrees with Staff's change.

Section 280.250 Second Language Requirements

IAWC Position

IAWC does not contest Section 280.250 of Staff's Proposed Rule.

Section 280.260 Customer Information Packet

IAWC Position

IAWC does not contest Section 280.260 of Staff's Proposed Rule.

APPENDICES

Section 280 Appendix A: Disconnection Notice

IAWC Position

IAWC believes the language in proposed Appendix A requiring disconnection notices to be "in red" is ambiguous. IAWC therefore proposes revising Appendix A to permit disconnection notices to be printed on red paper stock or on white paper in red lettering, which would allow the Company to continue its current practice of sending disconnection notices on light red paper. (IAWC Ex. FLR-1.0 (CORR.), p. 15; IAWC Ex. FLR-3.1, p. 68.) IAWC believes any color font on red paper would be difficult for the customer to read. (IAWC Ex. FLR-1.0 (CORR.), p. 15.)

IAWC also proposes removing the term "medical payment arrangement" from the last paragraph of the sample Disconnection Notice in Appendix A consistent with its position regarding Section 280.20, "Medical payment arrangement," and Subsection 280.160(a) and the Company's contention that a medical payment arrangement simply is a form of a deferred payment arrangement which does not warrant a separate definition. (IAWC Ex. FLR-1.0 (CORR.), p. 12; IAWC Ex. FLR-3.1, p. 68.)

Section 280 Appendix B: Customer Rights (Appearing on the reverse side of disconnection notices sent to residential customers)

Paragraphs “Payment methods” through “Renegotiation”

IAWC Position

IAWC does not contest the paragraphs labeled “Payment methods” through “Renegotiation” of Appendix B to Staff’s Proposed Rule.

Paragraph “Financial Aid”

IAWC Position

IAWC proposes revising the paragraph titled “Financial Aid,” which references LIHEAP aid, to clarify that it applies specifically to gas and electric utilities. (FLR-3.1, p. 69.) IAWC further proposes adding a new “Financial Aid” paragraph specific to water and wastewater utilities which provides that assistance with those utility bills is available, and asks the customer to contact the utilities for information. For the reasons offered by the Company in support of its position regarding Section 280.20, “Low Income Customer,” IAWC argues the provisions specifically referencing LIHEAP and the determination of “low income status” under that program should be inapplicable to water utilities.

Paragraph “Medical Certification”

IAWC Position

IAWC proposes revising bullet 4) to accord with its proposed definition of “Medical necessity” for the reasons offered by the Company in support of that proposed definition and in support of its position regarding Section 280.20, “Medical necessity,” and Section 200.160. (IAWC Ex. FLR-3.1, p. 69.) For the same reasons, IAWC also proposes replacing the reference to “medical payment arrangement” in this section with “deferred payment arrangement.” IAWC believes there is no reason to consider a deferred payment arrangement resulting from a medical certification differently than other deferred payment arrangements offered by the utility to accommodate the needs of its customers.

Paragraphs “Active Duty Military” through “Regulations”

IAWC Position

IAWC does not contest the paragraphs labeled “Active Duty Military” through “Regulations” of Appendix B of Staff’s Proposed Rule.

Section 280 Appendix C: Public Notice

IAWC Position

IAWC does not contest Appendix C of Staff's Proposed Rule.

**Section 280 Appendix D: Insert to be Included with Each Disconnection Notice
Sent to Residential Gas and Electric Customers**

IAWC Position

IAWC does not contest Appendix D of Staff's Proposed Rule.

Dated: October 14, 2011

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

By: /s/ Anne M. Zehr

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CERTIFICATE OF SERVICE

I, Anne M. Zehr, an attorney, certify that on October 14, 2011, I served a copy of the foregoing Position Statement of Illinois-American Water Company by electronic mail to the individuals on the Commission's Service List for Docket 06-0703.

/s/ Anne M. Zehr

Anne M. Zehr